

December 2, 2020

Waste Management of Colorado, Inc.
c/o Tom Schweitzer
2400 W. Union Avenue
Englewood, CO 80110
tschweit@wm.com

CERTIFIED MAIL # _____
Return Receipt Requested

Re: Permit Modification and Draft Permit – Denver Arapahoe Chemical Waste Processing Facility Reconstructed Cell State RCRA Permit No. CO-20-04-21-01 (EPA ID# COD000695007)

Dear Mr. Schweitzer:

The Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the Division) has determined that Permit No. CO-20-04-21-0, issued to Waste Management's Denver Arapahoe Chemical Waste Processing Facility (DACWPF) does not meet the requirements of 6 CCR 1007-3, Section 264.90-101 (Subpart F of Part 264, Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and must be modified in order to prevent harm to the environment. Part IV (Groundwater Protection Program) of the current permit is the main focus of this modification.

The Division is modifying the permit pursuant to:

- 1) 6 CCR 1007-3, section 100.61(a)(2) because the Division has received new information from the Environmental Protection Agency (EPA) in the form of technical comments which conclude that the permit failed to establish a groundwater monitoring program which meets the requirements of 6 CCR 1007-3, section 264.90-101 (Subpart F). See EPA Region 8 Technical Comments on DACWPF Post-Closure Permit (attached). EPA's technical review is new information under section 100.61(a)(2) because it was not available to the Division at the time of permit issuance and would have justified the application of different permit conditions, i.e., permit conditions consistent with Subpart F, at the time of issuance.
- 2) 6 CCR 1007-3, sections 100.61(b)(1) and 100.64(a)(3) because the current permit is inconsistent with Colorado Hazardous Waste Act (CHWA) regulations, which implement the requirements of the federal Resource Conservation and Recovery Act (RCRA). Based on EPA's comments, the Division has determined that the permitted activity endangers the environment and can only be regulated to acceptable levels by modifying the permit to ensure that it is consistent with CHWA regulations.

Permitted hazardous waste facilities like DACWPF are required to ensure that hazardous constituents do not contaminate the groundwater “in the uppermost aquifer underlying the waste management area beyond the point of compliance.” 6 CCR 1007-3, § 264.92. An owner or operator of a permitted hazardous waste facility must establish a detection monitoring system to ensure that the regulated unit is not leaking hazardous constituents into groundwater. 6 CCR 1007-3, § 264.98. The facility’s permit must set a point of compliance within the uppermost aquifer underlying the regulated unit where detection monitoring must occur. 6 CCR 1007-3, § 264.95(a).

The point of compliance in DACWPF’s current permit is the lowest of three sandstone units underlying the landfill cell. As a result, DACWPF does not routinely monitor groundwater in the upper and intermediate aquifers. Like the prior two permits before it, the current permit requires monitoring in those aquifers only if leachate from the facility’s secondary leachate collection sump exceeds certain limits for hazardous constituents. The requirement to monitor in the upper and intermediate sandstone units has never been triggered.

In an effort to determine whether it had properly determined the point of compliance in the current permit, the Division requested that EPA conduct a technical review of the permit. EPA regularly offers such assistance to states which, like Colorado, have delegated authority to enforce the requirements of RCRA.

EPA’s technical review concluded that:

- (1) The upper and intermediate sandstone units are water-bearing and capable of yielding a sample;
- (2) “[T]he upper and intermediate sandstones are hydraulically connected and should be considered the ‘uppermost aquifer’ . . . and included in the detection monitoring program”;
- (3) “These [upper and intermediate sandstone units] are best positioned to provide for the earliest detection of a possible release from the unit. It is critical that the uppermost aquifers capable of yielding a water sample be monitored as part of the detection well network”;
- (4) “[T]he monitoring well number and locations are insufficient to monitor the uppermost aquifer”;
- (5) “[T]he DACWPF detection monitoring network is not actively monitoring the uppermost aquifer as required by § 264 Subpart F”;
- (6) The arrangement whereby leachate—and not groundwater—is monitored is insufficient because “[l]eachate monitoring can in no way detect a release from the landfill”;
- (7) Perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) should be “add[ed] . . . to the detection list at 70 parts per trillion (ppt) based on the EPA Drinking Water Health Advisory”; and



- (8) “DACWPF should specify one of the four approved statistical analysis methods listed in § 264.97(h) in the permit . . . or use an alternative method approved by CDPHE so that the analysis can be easily reviewed and replicated.”

Based on the new information in EPA’s technical review, the Division has determined that because the permit does adequately monitor groundwater in the uppermost aquifer, the permitted activity endangers the environment and can only be regulated to acceptable levels through modification. To that end, in accordance with 6 CCR 1007-3, Section 100.60(c), the Division has prepared a draft permit modification in which addresses these deficiencies.

Briefly, the draft permit modification:

- (1) Sets the point of compliance at the hydraulically downgradient limit of the waste management area within each of the three sandstone units (upper, intermediate, and lower Sandstone Units) and requires detection monitoring in all three sandstone units, which are hydraulically interconnected and capable of yielding a sample;
- (2) Requires, at a minimum, six additional wells (three in each of the upper and intermediate sandstone units) to be installed, developed and monitored;
- (3) Requires direct monitoring of groundwater in the upper and intermediate aquifers instead of conditioning such monitoring on leachate analytical results which exceed action levels;
- (4) Sets an action limit of 70 ppt for PFOA/PFOS in groundwater;
- (5) Requires the facility to utilize approved statistical analysis methods; and
- (6) Specifies the requirements for detection, compliance, and corrective action monitoring.
- (7) Includes a Unilateral Restrictive Notice pursuant to section 25-15-321.5, C.R.S. The Restrictive Notice ensures protection of human health and the environment by documenting that hazardous wastes have been disposed at DACWPF and restricts certain uses with a portion of the property (the “Restricted Area”).

The draft permit will be subject to public notice and a 45-day public comment period, as required by CCR 1007-3, section 100.506. The public comment period begins on December 3, 2020 and ends on January 19, 2021. All interested parties, including the Permittees, may submit written comments on the draft permit during this period. **FAILURE TO RAISE AN ISSUE OR PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD MAY PREVENT YOU FROM RAISING THAT ISSUE OR SUBMITTING SUCH INFORMATION IN AN APPEAL OF THE DEPARTMENT'S FINAL DECISION.** 6 CCR 1007-3, § 100.506 (d)(1)(vi).

No public hearing for the draft permit has been scheduled at this time. If a public hearing is requested in accordance with 6 CCR 1007-3, Section 100.507, it will be scheduled in accordance with 6 CCR 1007-3, Section 100.508. A copy of the draft permit, including all of its attachments, is provided with this letter, along with the public notice and a fact sheet prepared in accordance with 6



CCR 1007-3, Section 100.503. Copies of the draft permit, fact sheet and public notice have also been placed in the information repositories maintained under the permit for public review.

Please review the draft permit carefully. Upon completion of the public comment period for the draft permit, the Division will make a final decision on the permit modification in accordance with 6 CCR 1007-3, Section 100.511.

If you have any questions regarding these matters or would like to schedule a hearing on the draft permit, please contact Rick Mruz at 303-692-3332 or Richard.Mruz@state.co.us.

Sincerely,



Doug Knappe, Program Manager
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

Attachments: EPA Region 8 Technical Comments on DACWPF Post-Closure Permit
Draft Permit Modification with Attachments
Public Notice
Fact Sheet

